

REMARKS

On entry of the foregoing amendments, claims 13, 15-16 and 19 will be pending in the present application. The claims have been amended to conform them to U.S. method claim practice, and to more clearly recite the features of the claimed embodiments of the present invention. Claim 18 has been canceled, without prejudice to the subject matter contained therein.

In the Office Action mailed February 28, 2005, claims 13-19 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,752,654 to Mowry, Sr., *et al.* ("Mowry"), in view of U.S. Patent Publication No. 2003/0158632 ("Nierlich") and U.S. Patent No. 6,158,229 to Aizawa ("Aizawa").

The Applicants respectfully traverse the pending rejection and request it be reconsidered and withdrawn, on the grounds that – as in the previous Office Action – the cited references teach real-time *control of the amount of energy consumed by* a user's heating and/or cooling units, rather than the presently claimed control of the *mix* of heating and/or cooling *units* provided to a user to meet the *user-controlled* energy consumption.

The Present Invention: As noted in the January 18, 2005 Amendment, the present invention is directed to a heating and cooling supply business method in which, *inter alia*: (i) a user's lease fees are based on *total* energy use (*e.g.*, the total energy used or the heating and cooling used), not on the number of heating or cooling units provided or the price of the units; and (ii) an administrator determines whether the number of units and/or the capacity of individual units should be changed, based on the observed variation in the energy use.

The Cited References: Where the present claims recite monitoring of a user's energy use for the purpose of determining whether there is a need to *alter* the present *allocation* of units (*i.e.*, change the number and/or capacity of the units), Mowry teaches real-time *control* of the *existing* units to meet a sensed heating/cooling demand.¹ In this way, Mowry is like the previously cited Nierlich reference, which controls (*i.e.*, shuts down) a user's units when a user-defined energy price threshold is reached; Mowry also controls (*i.e.*, shuts down or activates) parts or all of a user's installed supplementary heater in response to user-defined temperature thresholds are met. Both of these references thus teach *administrator* control of the *amount of energy used the customer*, and *user* determination of the criteria for making changes to the amount of energy supplied (*e.g.*, room temperature (Mowry) or market price trigger point (Nierlich)).

Because these references are focused on control of the *amount* of energy *supplied* to a user, they fail to provide even a hint (let alone a suggestion) of the present claims' method for providing *user-controlled* heating and/or cooling units to a user, with *administrator* adjustment of the *mix* of *units* (number and/or capacity), based on post-hoc analysis of the *user's* choices of how much energy it desires to consume, as recited in claim 13:

¹ The Mowry reference teaches that, in response to the well-known problem of heat pumps being sometimes unable to meet user demands, a supplemental heat source can be used to meet the additional heat demand, and the operation of this supplemental heat source can be controlled to provide different amounts of supplemental heat, depending of the magnitude of the difference between the present temperature and a target temperature. Mowry Abstract; 2:10-39; 3:66-4:39.

monitoring each of the units via a network including at least one of the Internet and an intranet to identify a variation in an amount of heating or cooling *used by the user* from each unit at an administrator side of the network;

determining on the *administrator* side at least one of *whether to change a number* of units provided to the user and *whether to replace* at least one of the units by a unit of *different capacity* based on the monitored variation in the amount of heating and/or cooling used by the user;

directing execution of the determined unit change and/or replacement *from the administrator side*;

Claim 13.

Moreover, as to lease charges, Nierlich teaches nothing with regard to *unit* lease costs. While Nierlich teaches a system for *pricing the energy consumed* by a user (*i.e.*, cutting-off supplied power when spot-market energy prices rise above a predetermined threshold), there is nothing in this references which teaches or suggests claim 13's approach to *pricing the equipment* employed by the user to consume that energy. Thus, while Nierlich is cited as teaching "charging the user for *energy* used, wherein charges reflect fluctuating (variations) power usage," this teaching is *irrelevant* to claim 13's recitation of how the user is charged for the *equipment* using that energy, *i.e.*: "varying the user's *unit* lease charges based on the monitored total amount of heating and cooling used by the user from the leased units."²

² The Aizawa reference is cited (at 10:53-55 and 9:48-49) as teaching a transportable heat exchanger which is "leased for operation." February 28, 2005 Office Action at 3. Review of this reference, however, reveals that Aizawa contains nothing regarding determination of equipment lease rates. Aizawa discloses only the inclusion of a plurality of shut-off valves to permit a heat-exchanger to be transported to a new site with minimum refrigerant loss. Aizawa Abstract ("In order to seal in refrigerant ... [until] reuse ... after transfer ... on-off valves are provided in the refrigerant piping ... and the refrigerant is sealed in by closing all the on-off valves."). The mere fact that Aizawa mentions that "a leased or rented air conditioner 1 is transferred from the original place to a new place at the expiration of the contract," does not teach or suggest *anything* (Footnote continued...)

Because no combination of Mowry, Nierlich and/or Aizawa teaches or suggests all the features of independent claim 13, this claim and its dependent claims 15-17 and 19 are patentable over these references under § 103(a). Reconsideration of the pending § 103(a) rejection is respectfully requested.

CONCLUSION

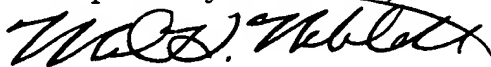
In view of the foregoing amendments and remarks, the Applicants submit the pending claims are in condition for allowance, and respectfully request issuance of a Notice of Allowance for claims 13, 15-17 and 19.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #199.49908).

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with regard to how the lease charge is determined. Accordingly, this reference fails to suggest any aspect of claim 13's approach to determining its equipment lease charges.